

Kaukamaka Gulch, Pali o Kalapakea, Kalua o Kamohoalii, Hula Kao, and Lae o ka Ule. This unit provides habitat for 4 populations of 100 mature, reproducing individuals of the long-lived perennial *K. kahoolawensis* and is currently occupied by two plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, rocky talus slopes. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, the units are of an appropriate distance apart to avoid their destruction by one naturally occurring catastrophic event.

Kahoolawe 3—*Kanaloa kahoolawensis*—c

This unit is critical habitat for *Kanaloa kahoolawensis* and is 5 ha (12 ac) on State (KIRC) land. The unit contains the entirety of Puu Koae Islet. This unit, in combination with a portion of Kahoolawe 2—*Kanaloa kahoolawensis*—b, provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *K. kahoolawensis* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, rocky talus slopes. Although we do not believe that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, the units are essential because they are an appropriate distance apart to avoid their destruction by one naturally occurring catastrophic event.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal action agency must enter into consultation with us. Section 7(a)(4) of the Act requires Federal agencies (action agency) to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. Destruction or adverse modification of critical habitat

occurs when a Federal action directly or indirectly alters critical habitat to the extent that it appreciably diminishes the value of critical habitat for the conservation of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat when their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate formal consultation on previously reviewed actions under certain circumstances, including instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement, or control has been retained or is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conferencing with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide “reasonable and prudent alternatives” to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency’s legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the likelihood of the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Activities on Federal lands that may affect the critical habitat of one or more of the 60 plant species from Maui and Kahoolawe will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*) the Department of Housing and Urban Development, or a section 10(a)(1)(B)

permit from us; or some other Federal action, including funding (*e.g.*, from the Federal Highway Administration, Federal Aviation Administration (FAA), Federal Emergency Management Agency (FEMA), Environmental Protection Agency (EPA), or Department of Energy), regulation of airport improvement activities by the FAA; and construction of communication sites licensed by the Federal Communications Commission, may also be subject to the section 7 consultation process. Federal actions not affecting critical habitat and actions on non-Federal lands that are not federally funded, authorized, or permitted would not require section 7 consultation as a result of this rule designating critical habitat.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. We note that such activities may also jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to:

(1) Activities that appreciably degrade or destroy the primary constituent elements including, but not limited to: Overgrazing; maintenance of feral ungulates; clearing or cutting of native live trees and shrubs, whether by burning or mechanical, chemical, or other means (*e.g.*, woodcutting, bulldozing, construction, road building, mining, herbicide application); introducing or enabling the spread of nonnative species; and taking actions that pose a risk of fire;

(2) Activities that alter watershed characteristics in ways that would appreciably reduce groundwater recharge or alter natural, dynamic wetland or other vegetative communities. Such activities may include manipulation of vegetation, such as timber harvesting, residential and commercial development, and grazing of livestock that degrades watershed values;

(3) Rural residential construction that includes concrete pads for foundations and the installation of septic systems in wetlands where a permit under section 404 of the Clean Water Act would be required by the Corps;

(4) Recreational activities that appreciably degrade vegetation;

(5) Mining of sand or other minerals;